REMARKS

A. Introduction

Claims 1-16 were presented for examination

Claims 1-16 were rejected.

Claims 2, 10, 11, and 16 were amended.

New claim 17 and 18 are submitted.

B. Claim Rejections Under 35 U.S.C. § 112

Examiner has rejected Claim 16 under 35 U.S.C. § 112 as being indefinite for failure to point out and distinctly claim the subject matter of the claimed invention. Applicant has considered these rejections and has amended Claim 16 to clarify the claimed mesh size and the particle size.

C. Claim Rejections Under 35 U.S.C. § 103

Examiner rejected Claims 1-16 under 35 U.S.C. § 103 on the grounds that they are obvious and unpatentable in light of EP 1074 245 alone or EP '245 in view of Durr et al (U.S. Patent No. 5,997,889).

The examiner bears the initial burden of establishing a prima facie case of obviousness. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be some reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on

applicant's disclosure. Manual of Patent Examining Procedure (M.P.E.P. 2142); *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Examiner has failed to establish a prima facie case of obviousness.

1. Teaching or Suggestion of all Claim Limitations

The prior art references do not teach or suggest all of the claim limitations. First, EP '245 does not teach or suggest the following: (1) at least 50% Dead Sea salts; (2) use of processed Dead Sea salts as ultra-fine particles; (3) use of an oil-based carrier medium; and (4) the combination of essential oil blend fragrances of lavender, rosewood, chamomile, and calendula. EP '245 teaches use of only 5% Dead Sea salts up to about 10% Dead Sea salts, which maintain their large granularity for exfoliation due to the non-oil based carrier medium used. The present invention's primary ingredient is Dead Sea salts, which are processed into ultra-fine particles so they are not large granules. The use of the oil based carrier medium prevents settling out of the Dead Sea minerals. EP '245 does teach the use of aromatic essences, however, there is no combination taught containing lavender, rosewood, chamomile, and calendula.

Second, Durr et al. '889 is a composition that does not teach or suggest the following: (1) use of any Dead Sea salts; (2) use of an oil-based carrier medium; and (3) use of essential oil blends as fragrances. Durr et al. '889 teaches use of natural oils for hand and body cremes in which the majority of the composition are these natural oils. However, Durr et al. '889 does not teach the use of this oil as a "continuous all-natural carrier medium" used for the purpose of preventing the Dead Sea minerals from rapidly settling out of the carrier medium, which is the only purpose of the oil based carrier medium in the present invention. Durr et al. '889 also does not teach the use of essential oil blends to add fragrances to the cosmetic compositions.

2. Non-Analogous Art

To rely on references under 35 U.S.C. § 103, the references must be analogous prior art. M.P.E.P. 2141.01(a). In order to rely on a reference as a basis for a rejection of an applicant's invention, the reference must be either in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

Respectfully, the prior art references cited by examiner are non-analogous art and were improperly relied on to reject Claims 1-16 of the present invention. The prior art references are clearly outside the field of Applicants' endeavor. The present invention comprises an oil-based cosmetic composition containing at least 50% processed ultra-fine Dead Sea mineral particles, whereas the composition claimed in EP '245 is in a non-oil base and contains up to about 10% Dead Sea salts. Therefore, the primary ingredient in EP '245 is not Dead Sea salts and the granules are not ultra-fine like the present invention. Even though Durr et al. '889 is a hand and body crème composition used for common skin ailments, it does not even contain any Dead Sea salts. Therefore, the oil-based nature and Dead Sea salt composition of the present invention cannot be considered obvious in light of EP '245 alone or EP '245 in view of Durr et al. '889. It is clear that it is the intention of Applicant for a cosmetic composition with at least 50% ultra-fine Dead Sea salts in an oil-based carrier medium, which would not be a suitable composition in EP '245 or Durr et al. '889.

3. Suggestion to Combine References

In addition to being nonanalogous art, Durr et al. '889 does not suggest the use of any Dead Sea salts. Also, EP '245 does not suggest the use of significantly more Dead Sea salts than about 10%, nor the use of ultra-find Dead Sea salts, nor the use of an oil based carrier medium. Therefore, since no suggestion exists to significantly increase the amount of Dead Sea salts, process the Dead Sea salts to ultra-fine particles, or use an oil based carrier medium in EP '245 and there is no suggestion to even use Dead Sea salts in Durr et al. '889, there would not be any reasonable expectation of success to modify the compositions claimed in these prior art references or to combine these prior art references.

D. Double Patenting Rejection

Examiner provisionally rejected Claims 1-16 based on the judicially created doctrine of obviousness-type double patenting in light of Applicant's copending Application No. 10/601,795. Applicant has enclosed in this response a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to show that both applications are commonly owned. The fee of $55 is attached.

E. New Invention Disclosure Statement

In addition to the above amendments and remarks, Applicant is also filing another invention disclosure statement due to incorrect printing of two patent numbers on a previously filed IDS. The $180 fee under §1.17(p) is attached.

Applicant has considered all points made by the Examiner in the Office Action dated March 5, 2004 and has incorporated Examiner's suggestions to ensure compliance with the applicable rules. In view of the above, it is submitted that Claims 1- 18 are in a condition for allowance. Reconsideration and withdrawal of the objections and rejections is respectfully

requested.

If impediments to allowance of Claims 1- 18 remain and a telephone conference between the undersigned and the examiner would help remove such impediments in the opinion of the examiner, a telephone conference is respectfully requested.

Respectfully submitted,

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